

MEMO

Date: October 10, 2012

To: CCCERA Board of Retirement

From: Kurt Schneider, Deputy Chief Executive Officer

Subject: Superior Court Retirement Incentive Payment

Background:

On August 28, the Superior Court of Contra Costa (the District) contacted CCCERA with a request. The District's payroll department asked us to confirm whether a lump sum payment as part of an early retirement incentive package being offered to Commissioners would be included in compensation for retirement purposes. The District had initially been under the impression that incentives paid only upon termination would not be included in compensation for retirement purposes. We informed the District that all new pay items need to be reviewed by CCCERA before we can determine whether or not they are included in compensation for retirement purposes. We asked the District for the incentive pay agreement in writing but were told that the agreement had not been finalized.

We discussed with the District the possible impact of the incentive pay and presented other options, such as a "golden handshake", which would increase the Commissioners' retirement allowance but allow the District to fund the increase. On September 19, CCCERA staff wrote a letter to the District outlining all the facts as we understood them and provided the District with further information on the Board's Compensation Policy and County Employees Retirement Law. Again we asked for the incentive agreement in writing as well as information about the pay code the District would use for the incentive pay.

On September 25, the District responded to our request and provided all the necessary information for CCCERA to make a determination as to whether the incentive pay should be included in compensation for retirement purposes.

Based on the information provided by the District, CCCERA staff believes the incentive pay is not explicitly included or excluded by any current statute or Board policy. Staff also does not believe the incentive pay is perfectly analogous to any past practice at CCCERA. Therefore, we request the Board make a determination as to whether the incentive pay should be included in compensation for retirement purposes.

Retirement Incentive Payment:

The District is asking Commissioners to voluntarily retire from the District and CCCERA on December 31, 2012. In exchange for agreeing to voluntarily retire, the Commissioners are to

receive a Retirement Incentive Payment no later than the retirement date equal to one week of pay (up to a maximum of 13 weeks) for each full year of full time employment with the District. The District is making no assurances to the Commissioners that the payment will be included in the calculation of any CCCERA benefits. It is up to CCCERA to make the determination.

Other Considerations:

Most, if not all, of the Commissioners being offered the incentive will be eligible for the maximum incentive payment equal to 13 weeks of pay. Including the incentive payment as compensation for retirement purposes could increase the members' retirement allowance by as much as 25%. The contributions that would be paid on the incentive payment would fund only a small fraction of the additional actuarial liability thus creating a substantial additional Unfunded Actuarial Accrued Liability (UAAL) due to the inclusion of the incentive pay as compensation for retirement purposes:

For an employer in its own cost group, the additional UAAL would be funded by the employer through an increase in the UAAL rate over an 18 year period. Since the District's UAAL is pooled with Cost Groups #1 and #2, the District alone would not pay the additional UAAL under the current funding policy. Instead, the additional UAAL would be allocated to all the employers in Cost Groups #1 and #2 by payroll. As a result, the District would fund only about 5% of the additional UAAL while the County would fund about 92%.

CCCERA staff requests the Board make a determination as to whether the incentive pay should be included in compensation for retirement purposes.



Superior Court of California
County of Contra Costa
Financial Services – Payroll/Benefits
P.O. Box 1509
Martinez, CA 94553
Telephone: 925-957-5622
Fax: 925-957-5627
payrollandbenefits@contracosta.courts.ca.gov



September 25, 2012

Marilyn Leedom
Retirement Chief Executive Officer
Contra Costa County Employees' Retirement Association
1355 Willow Way, Suite 221
Concord, CA 94520

Re: Incentive Pay and Compensation Earnable

Dear Ms. Leedom:

This letter is in response to your letter dated September 19, 2012. We confirm the following:

- All commissioners eligible for the incentive became a member of CCCERA prior to January 1, 2011
- The incentive will be paid before December 31, 2012
- The incentive will not fall under the provisions of Gov. Code §31461.5

We will be creating a new pay item, "Early Retirement Incentive", which will be used specifically for payments associated with a lump sum to be paid to each eligible commissioner who chooses to take the Court's early retirement incentive.

We have attached for your reference a copy of the *Voluntary Retirement Agreement and General Release* and *Q&A – Early Retirement Incentive* documents which have been provided to the eligible commissioners.

Would you please let us know when you make the determination whether this pay item is or is not includable in "compensation"?

Sincerely,

A handwritten signature in cursive script that reads "Brandy Sanborn".

Brandy Sanborn
Financial Services Manager

Enclosures

VOLUNTARY RETIREMENT AGREEMENT AND GENERAL RELEASE

This VOLUNTARY RETIREMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is entered into by and between Commissioner _____ ("Employee") and the Superior Court of California, County of Contra Costa ("Employer" or "Court").

RECITALS

WHEREAS, Employee is employed by the Court as a Court Commissioner, having begun such employment on or about _____; and

WHEREAS, the Court is offering to its eligible Court Commissioners group a voluntary Early Retirement Incentive program to help address the mandated budget reduction; and

WHEREAS, Employee is eligible for participation in the Early Retirement Incentive program; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and sufficient consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Retirement. On _____ (insert date) Employee voluntarily completed her application for retirement and submitted same to the Contra Costa County Employees' Retirement Association ("CCCERA"), a copy of which is attached hereto as Attachment A. Pursuant to same, Employee hereby tenders to Employer her voluntary retirement from employment with Employer, effective December 31, 2012 ("retirement date").
2. Retirement incentive payment.
 - a. Payment. No later than the retirement date, Employer shall pay Employee the Early Retirement Incentive payment equal to one week's pay for every full year of full time regular employment with Employer, up to a maximum of thirteen (13) weeks' pay. This retirement incentive payment for Employee equals the gross sum of \$ _____. This retirement incentive payment is a sum to which Employee would not otherwise be entitled to receive but for the execution of this Agreement.
 - b. Tax consequences. Employer will issue the Early Retirement Incentive payment as a one-time, taxable payment, payable at the time the employee receives her final paycheck.
3. CCCERA Benefits.
 - a. No representation as to pension benefits. Employer makes no representations or assurances as to Employee's eligibility with respect to CCCERA benefits or the amount of any such benefits that she might receive, or is entitled to receive, due to her service with Employer or retirement from said service.

- b. No representation as to effect of incentive payment. Employer makes no representations or assurances as to the effect on such benefits, if any, of the early retirement benefit payment referenced above in paragraph 2; as same is subject solely to CCCERA rules, procedures and requirements.
- c. Future employment waived. Employee agrees that regardless of any determinations by CCCERA, Employee irrevocably waives any right or claim to employment, reemployment, reinstatement, or back pay under any provision of law. At the Court's sole discretion, the Court may hire a retired Commissioner to serve on a temporary basis as a retired annuitant, subject to all CCCERA rules and other legal requirements.

4. All Sums Due and Health Benefits

- a. Final Check. Employee acknowledges receipt on or before the retirement date of Employee's final paycheck, including all sums owed Employee in wages, salary, earned but unused vacation pay, and all other compensation otherwise due and owing Employee for services rendered up to Employee's last date of paid service.
- b. Retiree Health Benefits. The Court represents and Employee acknowledges that this Agreement in no way infringes upon Employee's rights or responsibilities under the Court's policies and procedures applicable to Employee for continued participation in health benefits coverage upon retirement.

- 5. Return of Property. Employee represents that on or before the execution of this Agreement she has returned to Employer all Court property in her possession.
- 6. Unemployment Benefits. Employee understands and agrees that her retirement and separation from employment pursuant to this Agreement is entirely voluntary and therefore Employee is not eligible for unemployment benefits. Accordingly, Employer may contest any request for and/or reward of unemployment benefits resulting from Employee's voluntary separation from employment.
- 7. No Claims. Employee hereby represents that she has not filed any claims, complaints, lawsuits or any other actions arising out of or related to her employment with Employer, nor has assigned any such claims to another.
- 8. Release. Employee hereby releases, acquits and forever discharges Employer and its officers, employees, agents, attorneys, successors and assigns (Releasees), from any and all claims, complaints, causes of action, expenses, debts, demands, costs, and other actions or liabilities of every nature, whether in law or in equity, that she may have or may claim to have as a result of or in any way related to her employment with Employer or her separation from such employment, including, but not limited to, state or federal civil actions, administrative complaints, or claims pursuant to Title VII of the Civil Rights Act, the Age Discrimination and Employment Act (ADEA), the California Fair Employment and Housing Act, the Family and Medical Leave Act, the Americans with Disabilities Act, the Fair Labor Standards Act, the California Civil Code, the California Labor Code; and the California Government Code,

including claims for breach of any employment agreement (whether express or implied), claimed violations of Court policies, breach of any covenant of good faith and fair dealing, any form of negligence, and any claims for wrongful demotion or wrongful termination from employment. Employee therefore agrees that she shall have no right whatsoever to file any lawsuit or institute any other action or legal proceeding of any type whatsoever based upon, connected with, or in any manner arising out of or related to her retirement and separation from employment by Employer.

9. Section 1542 Waiver. Employee expressly acknowledges that this release is intended to include in its effect, without limitation, all claims and causes of action that Employee does not know or suspect to exist in her favor, and that this release contemplates the extinguishment of all such claims and causes of action. Accordingly, Employee hereby knowingly and voluntarily waives any and all rights or benefits that she may now have or in the future may have, under the terms of section 1542 of the California Civil Code, the protections of which Employee hereby waives, and which provides in part:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor.

Notwithstanding the above, this Agreement does not waive any claims, including specifically but not limited to ADEA claims, that may arise after the effective date of this Agreement.

10. Covenant not to Sue: Employee shall not sue or initiate any action pertaining to any of the claims released herein against any of the Releasees, nor assign such claim to another. If she or anyone acting on her behalf brings such claim, then Employer or anyone acting on its behalf in defense of same shall be entitled to dismissal of such claim on the basis of this Agreement, as well as an award of actual costs and attorneys fees in connection therewith.
11. Age Discrimination: Without limiting the scope of this Agreement in any way, Employee certifies that this Agreement constitutes a knowing and voluntary waiver of any and all rights or claims that exist or that she has or may claim to have under the ADEA, as amended by the Older Workers' Benefit Protection Act of 1990 (29 U.S.C. §§ 621, et seq.). This release does not govern any rights or claims that might arise under the ADEA after the date this Agreement is signed by Employee. Employee acknowledges that:
- a.) The consideration provided pursuant to this Agreement is in addition to any consideration that she would otherwise be entitled to receive;
 - b.) She has been and is hereby advised in writing to consult with an attorney prior to signing this Agreement;
 - c.) She has been provided the opportunity to review this Agreement for a period of at least 45 (forty-five) days in order to consider this Agreement, although she may voluntarily elect not to take that full period to review. If she elects to take fewer than 45 days to review, she hereby acknowledges that she has had sufficient time to consider this Agreement and voluntarily and knowingly waives the balance of the 45-day period to consider the Agreement;

- d.) Employee has the right to revoke this Agreement at any time within the seven (7) day period following the date she signs the Agreement and the Agreement shall not become effective or enforceable until the seven (7) day revocation period expires. Notice of revocation must be made in writing and must be received by Employer through the Office of Court Executive Officer at 725 Court Street, P.O. Box 431, Martinez, CA 94553, (925) 957-5600 (telephone) or at (925) 957-5610 (fax) no later than close of business on the seventh (7th) day after she executes this Agreement.
12. Non-Admission of Liability. This Agreement is not, and shall not be construed as, an admission of liability, fault or wrongdoing of any kind by the parties hereto.
13. Applicable Law. This Agreement and Release shall be interpreted under the laws of the State of California.
14. Severability. Should any court or tribunal of competent jurisdiction determine any provision herein is unlawful or unenforceable, such determination shall not affect the remaining provisions herein, which shall continue in full force and effect.
15. Entire Agreement. This Agreement constitutes the only and the full, final, and complete agreement between the parties regarding any and all claims related to Employee's employment by Employer, the separation from said employment, and the withdrawal and release of all claims. This Agreement may only be modified in writing signed by both parties.
16. Knowing and Voluntary Waiver and Release.

EMPLOYEE HAS CAREFULLY READ AND FULLY UNDERSTOOD ALL OF THE PROVISIONS OF THIS AGREEMENT AND RELEASE, AND HEREBY KNOWINGLY AND VOLUNTARILY AGREES TO ALL THE TERMS SET FORTH HEREIN, UNDERSTANDING THAT SHE IS HEREBY FOREVER WAIVING HER RIGHT TO SUE OR BRING OTHER CLAIMS AGAINST EMPLOYER AND THE OTHER RELEASEES, AS SET FORTH HEREIN.

IN WITNESS THEREOF, Employee and Employer by duly authorized representative(s) enter into this Retirement Agreement and General Release on the day, month, and year written below.

_____, 2012

By: _____
_____, Employee

_____, 2012

By: _____
Diana Becton, Presiding Judge
Superior Court of California,
County of Contra Costa

Superior Court of California, County of Contra Costa
Early Retirement Incentive Program for Court Commissioners
September 17, 2012

Q&A – EARLY RETIREMENT INCENTIVE

What is the voluntary Early Retirement Incentive (ERI)?

The ERI is a proposal to allow Court Commissioners voluntarily to retire from employment earlier than they had planned, in exchange for a one-time monetary incentive payment measured by their length of service.

What is the purpose of the ERI?

State funding for the judicial branch has been more drastically cut this fiscal year than ever before. While over the past three years state funding reductions resulted in nearly \$7.5 million in cuts to Contra Costa Superior Court's budget, the Court now faces an additional \$7 million in permanent budget cuts it must achieve in the current fiscal year, as well as having to downsize in response to the State's dramatic sweeping of trial court reserves.

Because of this funding crisis, the Court can no longer maintain current public service levels. This means having to close a courthouse, close departments, and downsize Court services in other significant ways.

The ERI is intended to help address the mandated budget reductions. The ERI is being offered to specified employee groups as a means to facilitate voluntary, early retirement and thus help reduce numbers in certain Court employee classifications. This will achieve significant ongoing cost savings for the Court, while attempting to avoid layoffs, as well as providing a valuable financial incentive for qualified employees who voluntarily participate in the ERI.

Who is eligible to participate in the ERI?

The ERI is offered only to those Court Commissioners otherwise eligible to retire.

Is participation required?

No, participation in the ERI is entirely **voluntary**.

Is participation unlimited within this group?

No, participation is to be limited as follows:

- (1) Must be a current permanent Court Commissioner; and
- (2) Must be otherwise eligible to retire per the procedures and requirements of the Contra Costa County Employees' Retirement Association (CCCERA); and
- (3) Must retire effective on or before December 31, 2012; and
- (4) Cannot have already retired or resigned as of September 17, 2012; and
- (5) Cannot exceed maximum of four (4) full time equivalent (FTE) Court Commissioners; and
- (6) Must execute the Voluntary Retirement Agreement and General Release (see attached agreement).

What is the financial incentive offered?

The financial incentive offered is one weeks' pay for every full year of full time regular employment with the Court, up to a maximum of 13 (thirteen) weeks' pay.

How will the incentive payment be made?

The incentive payment will be made as a one-time, taxable payment, payable at the time the employee receives his/her final paycheck.

What is the treatment of the incentive payment itself for purposes of calculating retirement benefits?

Eligibility of the retirement incentive payment toward calculation of retirement benefits is subject solely to CCCERA rules, procedures and requirements. It is CCCERA – and not the Court – which will make the determination of how the ERI payment will be treated for purposes of calculating your post-retirement pension benefits.

Will participants in the ERI enjoy all other normal attributes of retirement?

Yes, retiring Court Commissioners participating in the ERI will also receive earned but unused vacation pay, will also participate in any retiree health program, if they are otherwise eligible based on existing rules, and will enjoy all the normal appurtenances of a CCCERA retirement from Court employment for which they are otherwise eligible.

When is the deadline for applying to participate in ERI?

Eligible Court Commissioners may apply for ERI by submitting a written request to participate to Court Human Resources up to and including October 19, 2012.

What other paperwork is required to participate in the ERI?

Participating Court Commissioners will be required to sign the Voluntary Retirement Agreement and General Release in order to receive the incentive payment. The agreement will detail the terms of the ERI, and will include a release that acknowledges the Court Commissioner will not seek reemployment with the Court, other than as a retired annuitant. At the Court's sole discretion, the Court may hire a retired Commissioner to serve on a temporary basis as a retired annuitant, subject to all CCCERA rules and other legal requirements.

Does retirement, including retirement with the ERI, allow participating employees to apply for unemployment insurance?

Because retirement, including retirement under the ERI program, is a completely voluntary separation, participating Court Commissioner will not qualify for unemployment insurance.

Further questions?

If you have any further questions, please direct them to Presiding Judge Diana Becton.

CONTRA COSTA COUNTY EMPLOYEE'S RETIREMENT ASSOCIATION

DETERMINING WHICH PAY ITEMS ARE "COMPENSATION" FOR RETIREMENT PURPOSES

Adopted: 12/05/97
Amended: 01/13/98
Amended: 03/10/10

PURPOSE:

The California Supreme Court decision in Ventura County Deputy Sheriff's Association v. Board of Retirement, 16 Cal.4th 483 (1997) changed a previously accepted construction of the statutory framework governing the compensation includible in the calculation of pensions under the 1937 Retirement Act.

In keeping with this ruling, the Retirement Board has re-examined the criteria it previously used to determine which pay items are compensation includible under Government Code Section 31460. The Board recognizes that any change in policy must not jeopardize the actuarial soundness of the retirement system.

Effective October 1, 1997, the following general principles will be applied in determining which pay items are subject to retirement contributions and included in pension calculations.

POLICY:

1. **Compensation includes all payments for services performed.**

All cash payments given as remuneration either for services rendered or for special skills or qualifications (ie. merit pay, longevity pay, standby pay, bilingual pay, holiday pay, educational incentive pay, etc.) are included in compensation.

2. **Compensation does not include "the monetary value of other advantages furnished to a member," but does include cash payments in lieu of such other advantages.**

In-kind benefits and reimbursements for job-related expenses are excluded.

With regard to cash payments in lieu of such advantages, the Board will evaluate how closely the pay item in question resembles, or functions as an effective substitute for salary.

Cash payments for items of "advantage" that the employee would otherwise purchase with salary are included.

3. **“Overtime” compensation is not included in compensation earnable if it is in excess of what is considered normal working hours.**

If the time worked is ordinarily expected to be worked, then it is included regardless of its formal characterization as overtime for pay purposes.

The fact that payments are made in a lump-sum will not prevent their inclusion within compensation earnable if they are accrued for time regularly worked, and simply withheld to a later date within the same year.

4. **Remuneration paid in cash for time earned is considered “final compensation” and is limited by the following:**

- a. Annual “cash-out”

The value of accrued time, such as vacation, holiday or sick leave, that is sold back to the employer by the employee each year under a “cash-out” agreement, is includible in compensation earnable.

- b. Lump sum at termination

Only the portion of accrued time (such as vacation, holiday or sick leave) that is paid in the form of a lump sum at termination, and that represents time earned during the final compensation period is includible in compensation.

CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

**ADDENDUM TO POLICY FOR DETERMINING WHICH PAY ITEMS ARE
"COMPENSATION" FOR RETIREMENT PURPOSES**

PURPOSE:

This Addendum to the Policy for Determining Which Pay Items are "Compensation" for Retirement Purposes, adopted December 5, 1997, and amended January 13, 1998 ("Policy"), reflects the Retirement Board's re-examination of the Policy since its adoption and the Retirement Board's decision to revise certain aspects of the Policy with respect to persons who become members of the retirement system on and after January 1, 2011. This Addendum is made as of March 10, 2010 and shall be referenced in communications to affected members regarding the Policy following its adoption.

POLICY:

Notwithstanding anything to the contrary in the Policy, the following policies and procedures shall be effective as to the determination of "compensation," "compensation earnable" and "final compensation," as defined in the County Employees Retirement Law of 1937, Government Code sections 31450, et seq.

1. Remuneration paid in cash for time earned is considered "final compensation" and is limited by the following:

- a. Annual "cash out"
The value of accrued time, such as vacation, holiday, sick or administrative leave, that is both earned and sold back to the employer by the employee during the final compensation period under a "cash-out" agreement, is includable in compensation earnable.
- b. Lump sum at termination
Only the portion of accrued time (such as vacation, holiday, sick or administrative leave) that is paid in the form of a lump sum at termination, and that represents time both earned and cashable during the final compensation period, is includable in compensation earnable.

2. Additional examples of amounts that are not included in "compensation earnable"

- a. For each year of the final compensation period, leave amounts sold back during any twelve-month period that were accrued over two or more fiscal or calendar years,

and that exceed the amount that was both earned and cashable during service in that twelve-month period.

- c. Incentives, bonuses and other payments to the extent they may not be received in cash during service, but only upon termination or retirement.
- c. Conversion of in-kind benefits and other advantages to cash during the final compensation period.

3. Members affected

This Addendum shall be effective as to the calculation of retirement allowances for those members of CCCERA whose original date of membership in the retirement system is on or after January 1, 2011.